

ERNESTO NAVALLO, PETITIONER, VS. HONORABLE SANDIGANBAYAN (SECOND DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 97214. July 18, 1994

Ponente: VITUG, J.

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VITUG, J.:

On 11 May 1978, an information charging petitioner with having violated Article 217, paragraph 4, of the Revised Penal Code, was filed with the then Court of First Instance ("CFI") of Surigao del Norte (docketed Criminal Case No. 299). It read:

"That on or before January 27, 1978 in the municipality of del Carmen, Province of Surigao del Norte and within the jurisdiction of this Honorable Court, accused who is the Collecting and Disbursing Officer of the Numancia National Vocational School, which school is also located at del Carmen, Surigao del Norte and while a Collecting and Disbursing Officer of the aforestated school therefore was holding in trust moneys and/or properties of the government of the Republic of the Philippines and holding in trust public funds with all freedom, intelligence, criminal intent and intent of gain, did then and there voluntarily, unlawfully, feloniously and without lawful authority appropriate and misappropriate to his own private benefit, public funds he was holding in trust for the Government of the Philippines in the total sum of SIXTEEN THOUSAND FOUR HUNDRED EIGHTY THREE PESOS and SIXTY-TWO CENTAVOS (P16,483.62), Philippine Currency, which total sum accused failed to account during an audit and failed as well to restitute despite demands by the office of the Provincial Auditor, to the damage and prejudice of the Government equal to the amount misappropriated.

"Act contrary to par. 4 of Article 217, of the Revised Penal Code with a penalty of Reclusion Temporal, minimum and medium periods and in addition to penalty of perpetual special disqualification and fine as provided in the same Article." [1]

A warrant of arrest was issued, followed by two alias warrants of arrest, but accused-petitioner Ernesto Navallo still then could not be found.

Meanwhile, on 10 December 1978, Presidential Decree No. 1606 took effect creating the Sandiganbayan and conferring on it original and exclusive jurisdiction over crimes committed by public officers embraced in Title VII of the Revised Penal Code.

On 15 November 1984, Navallo was finally arrested. He was, however, later released on provisional liberty upon the approval of his property bail bond. When arraigned by the Regional Trial Court ("RTC") on 18 July 1985, he pleaded not guilty. On 22 May 1986, upon motion of the prosecution, the RTC transferred the case and transmitted its records to the Sandiganbayan. On 27 January 1989, Special Prosecutor Luz L. Quiñones-Marcos opined that since Navallo had already been arraigned before the case was transferred to the Sandiganbayan, the RTC should continue taking cognizance of the case. The matter was referred to the Office of the Ombudsman which held otherwise. The information was docketed (Criminal Case No. 13696) with the Sandiganbayan. A new

order for Navallo's arrest was issued by the Sandiganbayan. The warrant was returned with a certification by the RTC Clerk of Court that the accused had posted a bail bond. The bond, having been later found to be defective, on 30 August 1989, a new bond was approved and transmitted to the Sandiganbayan.

Navallo filed a motion to quash, contending (1) that the Sandiganbayan had no jurisdiction over the offense and the person of the accused and (2) that since the accused had already been arraigned by the RTC, the attempt to prosecute him before the Sandiganbayan would constitute double jeopardy. On 15 September 1989, the Sandiganbayan issued a resolution denying Navallo's motion. On 20 October 1989, Navallo was arraigned; he pleaded, "not guilty," to the charge. Trial ensued.

Evidence for the Prosecution:

On 27 January 1978, the Provincial Auditor of Surigao del Norte, Antonio Espino, made a preliminary audit examination of cash and other accounts of Ernesto Navallo (then Collecting and Disbursing Officer of Numancia National Vocational School). Espino found Navallo to be short of P16,483.62. The auditor, however, was then merely able to prepare a cash count sheet since he still had to proceed to other municipalities. Before departing, Espino sealed the vault of Navallo.

On 30 January 1978, Leopoldo A. Dulguime was directed by Espino to complete the preliminary examination and to conduct a final audit. Dulguime broke the seal, opened the vault, and made a new cash count. Dulguime next examined the cashbook of Navallo. Dulguime did not examine the official receipts reflected in the cashbook, said receipts having been previously turned over to the Office of the Provincial Auditor. After the audit, he had the cashbook likewise deposited with the same office. The audit covered the period from July 1976 to January 1978 on the basis of postings and record of collections certified to by Navallo. Dulguime confirmed Navallo's shortage of P16,483.62. Dulguime made a Report of Examination and wrote Navallo a letter demanding the restitution of the missing amount. The latter neither complied nor offered any explanation for the shortage. The official receipts and cashbook, together with some other records, were subsequently lost or damaged on account of a typhoon that visited the province.

Evidence for the Defense:

The accused, Navallo, testified that in 1970, he was a Clerk I in the Numancia National Vocational School. In 1976, he was appointed Collecting and Disbursing Officer of the school. His duties included the collection of tuition fees, preparation of vouchers for salaries of teachers and employees, and remittance of collections exceeding P500.00 to the National Treasury. Even while he had not yet received his appointment papers, he, together with, and upon the instructions of, Cesar Macasemo (the Principal and Navallo's predecessor as Collecting and Disbursing Officer of the school), was himself already doing entries in the cashbook. Navallo and Macasemo thus both used the vault. Navallo said that he started the job of a disbursement officer in June 1977, and began to discharge in full the duties of his new position (Collection and Disbursement Officer) only in 1978. There was no formal turn over of accountability from Macasemo to Navallo.

Gainsaying the prosecution's evidence, Navallo continued that the charge against him was motivated by a personal grudge on the part of Espino. On 25 January 1978, he said, he was summoned to appear at the Numancia National Vocational School where he saw Espino and Macasemo. The safe used by him and by Macasemo was already open when he arrived, and the cash which was taken out from the safe was placed on top of a table. He did not see the actual counting of the money and no actual audit of his accountability was made by Espino. Navallo signed the cash count only because he was pressured by Macasemo who assured him that he (Macasemo) would settle everything. The collections in 1976, reflected in the Statement of Accountability, were not his, he declared, but those of Macasemo who had unliquidated cash advances.

Navallo admitted having received the demand letter but he did not reply because he was already in Manila looking for another employment. He was in Manila when the case was filed against him. He did not exert any effort to have Macasemo appear in the preliminary investigation, relying instead on Macasemo's assurance that he would settle the matter. He, however, verbally informed the investigating fiscal that the shortage represented the unliquidated cash advance of Macasemo.

The Appealed Decision:

On 08 November 1990, after evaluating the evidence, the Sandiganbayan reached a decision, and it rendered judgment, thus:

"WHEREFORE, the Court finds the accused ERNESTO NAVALLO y GALON GUILTY beyond reasonable doubt as principal of the crime of malversation of public funds defined and penalized under Article 217, paragraph 4, of the Revised Penal Code.

"Accordingly and there being no modifying circumstances nor reason negating the application of the Indeterminate Sentence Law, as amended, the Court imposes upon the accused the indeterminate sentence ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as maximum; the penalty of perpetual special disqualification, and a fine in the amount of SIXTEEN THOUSAND FOUR HUNDRED EIGHTY THREE PESOS AND SIXTY-TWO CENTAVOS (P16,483.62), Philippine Currency.

"The Court further orders the accused to restitute the amount malversed to the Government.

"SO ORDERED."[2]

Accused-petitioner's motion for reconsideration was denied by the Sandiganbayan in its resolution of 05 February 1991.

Hence, the instant petition.

Four issues are raised in this appeal -

1. Whether or not the Sandiganbayan acquired jurisdiction to try and decide the offense filed against petitioner in spite of the fact that long before the law creating the Sandiganbayan took effect, an Information had already been filed with the then Court of First Instance of Surigao del Norte.
2. Whether or not double jeopardy set in when petitioner was arraigned by the Regional Trial Court on July 18, 1985.
3. Whether or not petitioner was under custodial investigation when he signed the certification prepared by State Auditing Examiner Leopoldo Dulguime.
4. Whether or not the guilt of petitioner has been established by the prosecution beyond reasonable doubt as to warrant his conviction for the offense imputed against him.

We see no merit in the petition.

On 10 December 1978, Presidential Decree No. 1606 took effect providing, among other things, thusly:

“SEC. 4. Jurisdiction. – The Sandiganbayan shall have jurisdiction over:

"(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

“(b) Crimes committed by public officers and employees, including those employed in government-owned or

controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

"(c) Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office."

"x x x x x x x x"

"SEC. 8. Transfer of cases. - As of the date of the effectivity of this decree, any case cognizable by the Sandiganbayan within its exclusive jurisdiction where none of the accused has been arraigned shall be transferred to the Sandiganbayan."

The law is explicit and clear. A case falling under the jurisdiction of the Sandiganbayan shall be transferred to it so long as the accused has not as yet been properly arraigned elsewhere on the date of effectivity of the law, i.e., on 10 December 1978. The accused is charged with having violated paragraph 4, Article 217, of the Revised Penal Code -

"Art. 217. Malversation of public funds or property. - Presumption of Malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

"x x x x x x x x."

"4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua."

an offense which falls under Title VII of the Revised Penal Code and, without question, triable by the Sandiganbayan. Navallo's arraignment before the RTC on 18 July 1985 is several years after Presidential Decree No. 1606, consigning that jurisdiction to the Sandiganbayan, had become effective.

Accused-petitioner, invoking Section 7, Rule 117, of the Revised Rules of Court, pleads double jeopardy. We cannot agree. Double jeopardy requires the existence of the following requisites:

- (1) The previous complaint or information or other formal charge is sufficient in form and substance to sustain a conviction;
- (2) The court has jurisdiction to try the case;
- (3) The accused has been arraigned and has pleaded to the charge; and
- (4) The accused is convicted or acquitted or the case is dismissed without his express consent.

When all the above elements are present, a second prosecution for (a) the same offense, or (b) an attempt to commit the said offense, or (c) a frustration of the said offense, or (d) any offense which necessarily includes, or is necessarily included in, the first offense charged, can rightly be barred.

In the case at bench, the RTC was devoid of jurisdiction when it conducted an arraignment of the accused which by then had already been conferred on the Sandiganbayan. Moreover, neither did the case there terminate with conviction or acquittal nor was it dismissed.

Accused-petitioner claims to have been deprived of his constitutional rights under Section 12, Article III, of the 1987 Constitution.[3] Well-settled is the rule that such rights are invocable only when the accused is under

“custodial investigation,” or is “in custody investigation,”[4] which we have since defined as any “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”[5] A person under a normal audit examination is not under custodial investigation. An audit examiner himself can hardly be deemed to be the law enforcement officer contemplated in the above rule. In any case, the allegation of his having been “pressured” to sign the Examination Report prepared by Dulguime appears to be belied by his own testimony. To quote:

"Q. How were you pressured?

"A. Mr. Macasemo told me to sign the report because he will be the one to settle everything.

“xxx xxx xxx

"Q. Why did you allow yourself to be pressured when you will be the one ultimately to suffer?

"A. Because he told me that everything will be all right and that he will be the one to talk with the auditor.

"Q. Did he tell you exactly what you will do with the auditor to be relieved of responsibility?

"A. No, your Honor.

“Q. Why did you not ask him?

"A. I was ashamed to ask him, your Honor, because he was my superior. "[6]

Navallo may have been persuaded, but certainly not pressured, to sign the auditor's report. Furthermore, Navallo again contradicted himself when, in his very petition to this Court, he stated:

"Bearing in mind the high respect of the accused with his superior officer and taking into consideration his gratitude for the favors that his superior officer has extended him in recommending him the position he held even if he was not an accountant, he readily agreed to sign the auditor's report even if he was not given the opportunity to explain the alleged shortage."[7]

Finally, accused-petitioner challenges the sufficiency of evidence against him. Suffice it to say that the law he contravened itself creates a presumption of evidence. Article 217 of the Revised Penal Code states that "(t)he failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use." An accountable officer, therefore, may be convicted of malversation even in the absence of direct proof of misappropriation as long as there is evidence of shortage in his accounts which he is unable to explain.[8] Not least insignificant is the evaluation of the evidence of the Sandiganbayan itself which has found thusly:

"The claim that the amount of the shortage represented the unliquidated cash advance of Macasemo does not inspire belief. No details whatsoever were given by the accused on the matter such as, for instance, when and for what purpose was the alleged cash advance granted, what step or steps were taken by Navallo or Macasemo to liquidate it. In fact, Navallo admitted that he did not even ask Macasemo as to how he (Navallo) could be relieved of his responsibility for the missing amount when he was promised by Macasemo that everything would be all right. When Navallo was already in Manila, he did not also even write Macasemo about the shortage.

“As to the collections made in 1976 which Navallo denied having made, the evidence of the prosecution shows that he assumed the office of Collecting and Disbursing Officer in July 1976 and the cashbook which was examined during the audit contained entries from July 1976 to January 1978, which he certified to. Navallo confirmed that indeed he was appointed Collecting and Disbursing Officer in 1976.

"Finally, the pretense that the missing amount was the unliquidated cash advance of Macasemo and that Navallo did not collect tuition fees in 1976 was advanced for the first time during the trial, that is, 12 long solid years after the audit on January 30, 1978. Nothing was said about it at the time of the audit and immediately thereafter."

Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. We see nothing on record in this case that can justify a deviation from the rule.

WHEREFORE, the petition is DISMISSED and the decision of respondent Sandiganbayan is AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.

[1] Rollo, p. 28.

[2] Rollo, p. 52.

[3] Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

[4] See *People vs. Loveria*, 187 SCRA 47; *People vs. Duero*, 104 SCRA 379.

[5] *People vs. Loveria*, 187 SCRA 47; *People vs. Caguioa*, 95 SCRA 2; *Miranda vs. Arizona*, 384 U.S. 436.

[6] Rollo, pp. 19-20.

[7] Rollo, p. 6.

[8] *De Guzman vs. People*, 119 SCRA 337.

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